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HOUSE BILL 413

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO PUBLIC SAFETY; CREATING THE OFFICE OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT; PROVIDING POWERS AND DUTIES; CHANGING THE SHORT TITLES OF CERTAIN ACTS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Homeland Security and Emergency Management Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the Homeland Security and Emergency Management Act is to establish an office to:

A. consolidate and coordinate homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection,

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1 response and recovery for emergencies and disasters, regardless
2 of cause, and acts of terrorism;

3 B. act as the central primary coordinating agency
4 for the state and its political subdivisions in response to
5 emergencies, disasters and acts of terrorism; and

6 C. act as the conduit for federal assistance and
7 cooperation in response to emergencies, disasters and acts of
8 terrorism.

9 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
10 Homeland Security and Emergency Management Act:

11 A. "director" means the executive director of
12 homeland security and emergency management; and

13 B. "office" means the office of homeland security
14 and emergency management.

15 Section 4. [NEW MATERIAL] OFFICE OF HOMELAND SECURITY AND
16 EMERGENCY MANAGEMENT--CREATED--POWERS AND DUTIES.--

17 A. The "office of homeland security and emergency
18 management" is created as an adjunct agency. The chief
19 administrative and executive officer of the office is the
20 "executive director of homeland security and emergency
21 management", appointed by the governor with the advice and
22 consent of the senate.

23 B. The director is responsible to the governor for
24 the operation of the office. The director shall manage all
25 operations of the office and administer and enforce the law

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1 with which the director or the office is charged. To perform
2 the director's duties, the director has every power expressly
3 enumerated in the laws, whether granted to the director or to
4 the office or to any division of the office, except where
5 authority conferred upon any division of the office is
6 explicitly exempted from the authority of the director by
7 statute.

8 C. The director may:

9 (1) subject to available funding, employ such
10 professional, technical, administrative and clerical personnel
11 as are necessary to perform the duties of the office;

12 (2) adopt and promulgate rules to implement
13 the provisions of the Homeland Security and Emergency
14 Management Act and other laws for which the office has
15 responsibility; and

16 (3) apply for and receive any public or
17 private funds available to the office to carry out its
18 programs, duties and services and accept any gifts, donations,
19 bequests and devises.

20 D. The director shall serve as the governor's
21 homeland security advisor.

22 E. The office shall:

23 (1) coordinate the homeland security and
24 emergency management efforts of all state and local government
25 agencies, as well as enlist cooperation from private entities

1 such as health care providers;

2 (2) apply for and accept federal funds for
3 homeland security, administer the funds and develop criteria to
4 allocate grants to local governments, tribes, state agencies
5 and other qualified entities;

6 (3) act as liaison between federal, state and
7 local agencies to effect the improved sharing of
8 counterterrorism intelligence;

9 (4) provide information to the general public
10 and to private businesses that is essential to ensuring their
11 safety and security and provide the governor with timely
12 information relating to emergencies, disasters and acts of
13 terrorism or terrorist threats;

14 (5) establish security standards for state
15 facilities and for protection of their occupants and develop
16 plans for the continuity of state government operations in the
17 event of a threat or act of terrorism or other natural or
18 man-made disaster;

19 (6) identify the state's critical
20 infrastructures and assist public and private entities with
21 developing plans and procedures designed to implement the
22 protective actions necessary to continue operations;

23 (7) coordinate state agency and local
24 government plans for prevention, preparedness and response with
25 a focus on an all-hazards approach;

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1 (8) coordinate law enforcement
2 counterterrorism prevention, preparedness and response training
3 on a statewide basis, including training for emergency
4 responders, government officials, health care providers and
5 others as appropriate;

6 (9) work with emergency response and emergency
7 management programs and provide assistance in developing and
8 conducting terrorism response exercises for emergency
9 responders, government officials, health care providers and
10 others;

11 (10) coordinate the law enforcement's and
12 emergency responders' response to an act of terrorism or
13 terrorist threat;

14 (11) develop and maintain a statewide plan and
15 strategy to manage and allocate federal grant funds required to
16 provide the state's emergency response community with the
17 equipment necessary to respond to an act of terrorism involving
18 a weapon of mass destruction; and

19 (12) perform such other duties relating to
20 homeland security as may be assigned by the governor.

21 Section 5. [NEW MATERIAL] COOPERATION WITH FEDERAL
22 GOVERNMENT--AUTHORITY OF DIRECTOR--SINGLE STATE AGENCY
23 STATUS.--

24 A. The office is authorized to cooperate with the
25 federal government in the administration of homeland security

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1 and emergency management programs in which financial or other
2 participation by the federal government is authorized or
3 mandated under state or federal laws, rules or orders. The
4 office may enter into agreements with agencies of the federal
5 government to implement homeland security and emergency
6 management programs subject to availability of appropriated
7 state funds and any provisions of state laws applicable to such
8 agreements or participation by the state.

9 B. The governor may by appropriate order designate
10 the office as the single state agency for the administration of
11 any homeland security or emergency management program when that
12 designation is a condition of federal financial or other
13 participation in the program under applicable federal law, rule
14 or order. Whether or not a federal condition exists, the
15 governor may designate the office as the single state agency
16 for the administration of any homeland security or emergency
17 management program. No designation of a single state agency
18 under the authority granted in this section shall be made in
19 contravention of state law.

20 Section 6. Section 9-19-4 NMSA 1978 (being Laws 1987,
21 Chapter 254, Section 4, as amended) is amended to read:

22 "9-19-4. DEPARTMENT ESTABLISHED.--There is created in the
23 executive branch the "department of public safety". The
24 department shall be a cabinet department and shall consist of,
25 but not be limited to, five program divisions, an

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1 administrative division and an information technology division
2 as follows:

- 3 A. the New Mexico state police division;
- 4 B. the special investigations division;
- 5 C. the training and recruiting division;
- 6 D. the technical [~~and emergency~~] support division;
- 7 E. the administrative services division;
- 8 F. the motor transportation division; and
- 9 G. the information technology division."

10 Section 7. Section 9-19-7 NMSA 1978 (being Laws 1987,
11 Chapter 254, Section 7, as amended) is amended to read:

12 "9-19-7. ORGANIZATIONAL UNITS OF DEPARTMENT--POWERS AND
13 DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--

14 A. The organizational units of the department and
15 the officers of those units specified by law shall have all the
16 powers and duties enumerated in the specific laws involved.
17 However, the carrying out of those powers and duties shall be
18 subject to the direction and supervision of the secretary, who
19 shall retain the final decision-making authority and
20 responsibility for the administration of any such laws as
21 provided in Subsection B of Section 9-19-6 NMSA 1978. The
22 department shall have access to all records, data and
23 information of other state departments, agencies and
24 institutions, including its own organizational units, not
25 specifically held confidential by law.

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1 B. The New Mexico state police division shall
2 consist of the commissioned officers and civilian personnel,
3 including all communications equipment operators, of the New
4 Mexico state police uniform division and the commissioned
5 officers and civilian personnel of the New Mexico state police
6 criminal division and such other personnel as may be assigned
7 by the secretary or by the governor pursuant to an executive
8 order as authorized in the Department of Public Safety Act.

9 C. The special investigations division shall
10 consist of the staff of the governor's organized crime
11 prevention commission, the enforcement personnel of the
12 department of alcoholic beverage control and such other
13 personnel as may be assigned by the secretary or by the
14 governor pursuant to an executive order as authorized in the
15 Department of Public Safety Act. The division is responsible
16 for the enforcement of the Bingo and Raffle Act and the Liquor
17 Control Act.

18 D. The technical [~~and emergency~~] support division
19 shall consist of [~~the emergency planning and coordination~~
20 ~~bureau of the department of public safety, the personnel of the~~
21 ~~hazardous materials emergency response program or plan and such~~
22 ~~other~~] functions such as communications, crime laboratory and
23 records.

24 E. The training and recruiting division shall
25 consist of the personnel of the New Mexico law enforcement

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1 academy, the New Mexico state police training division and all
2 other training personnel and functions of the department as the
3 secretary may transfer to this division.

4 F. The administrative services division shall
5 consist of the administrative services and services divisions
6 of the New Mexico state police and those administrative support
7 personnel of the other existing departments, divisions or
8 offices as the secretary deems necessary."

9 Section 8. Section 12-10-1 NMSA 1978 (being Laws 1959,
10 Chapter 190, Section 1, as amended) is amended to read:

11 "12-10-1. SHORT TITLE.--Sections [~~9-13-15 through 9-13-17~~
12 ~~and 9-13-19 through 9-13-24 NMSA 1953~~] 12-10-1 through 12-10-10
13 NMSA 1978 may be cited as the "[~~State Civil~~] All Hazard
14 Emergency [~~Preparedness~~] Management Act".

15 Section 9. Section 12-10-2 NMSA 1978 (being Laws 1959,
16 Chapter 190, Section 2, as amended) is amended to read:

17 "12-10-2. PURPOSE.--The purpose of the [~~State Civil~~] All
18 Hazard Emergency [~~Preparedness~~] Management Act is to:

19 A. [~~to create the emergency planning and~~
20 ~~coordination bureau of the department of public safety and to~~]
21 authorize the creation of local offices of [~~civil emergency~~
22 ~~preparedness~~] emergency management in the political
23 subdivisions of the state;

24 B. [~~to~~] confer upon the governor and upon the
25 governing bodies of the state [~~civil~~] all hazard emergency

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1 [~~preparedness~~] management powers;

2 C. [~~to~~] provide [~~a civil~~] an emergency
3 [~~preparedness~~] operations plan for the protection of life and
4 property adequate to cope with disasters resulting from acts of
5 war or sabotage or from natural or man-made causes other than
6 acts of war;

7 D. [~~to~~] provide for coordination of all [~~civil~~] all
8 hazard emergency [~~preparedness~~] management functions of this
9 state with the comparable functions of the federal government
10 and other states and localities and of private agencies;

11 E. [~~to~~] initiate programs to render aid in the
12 emergency restoration of facilities, utilities and other
13 installations essential to the safety and general welfare of
14 the public; and

15 F. [~~to~~] provide for assistance and care for persons
16 displaced, left homeless or otherwise victims of disaster or
17 war conditions."

18 Section 10. Section 12-10-3 NMSA 1978 (being Laws 1969,
19 Chapter 33, Section 1, as amended) is amended to read:

20 "12-10-3. EMERGENCY PLANNING AND COORDINATION [~~BUREAU~~].--
21 [~~A. There is created the "emergency planning and coordination~~
22 ~~bureau" of the department of public safety. B.] The executive
23 ~~director [of the technical and emergency support division of~~
24 ~~the department of public safety] of homeland security and~~
25 emergency management shall be responsible [~~to the secretary]~~~~

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1 for carrying out the program for [~~civil~~] all hazard emergency
2 [~~preparedness~~] management authorized by law and shall serve as
3 the governor's authorized representative at the discretion of
4 the governor. The [~~emergency planning and coordination bureau~~
5 ~~chief~~] executive director shall direct and coordinate the
6 [~~civil~~] all hazard emergency [~~preparedness~~] management
7 activities of all state departments, agencies and political
8 subdivisions and shall maintain liaison with and cooperate with
9 [~~civil~~] all hazard emergency [~~preparedness~~] management agencies
10 and organizations of other states and of the federal
11 government."

12 Section 11. Section 12-10-4 NMSA 1978 (being Laws 1959,
13 Chapter 190, Section 5, as amended) is amended to read:

14 "12-10-4. [~~CIVIL~~] ALL HAZARD EMERGENCY [~~PREPAREDNESS~~]
15 MANAGEMENT--POWERS OF THE GOVERNOR.--

16 A. The governor shall have general direction and
17 control of the activities of the [~~emergency planning and~~
18 ~~coordination bureau~~] office of homeland security and emergency
19 management and shall be responsible for carrying out the
20 provisions of the [~~State Civil~~] All Hazard Emergency
21 [~~Preparedness~~] Management Act and, in the event of any man-made
22 or natural disaster causing or threatening widespread physical
23 or economic harm that is beyond local control and requiring the
24 resources of the state, shall exercise direction and control
25 over any and all state forces and resources engaged in

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1 emergency operations or related [~~civil~~] all hazard emergency
2 [~~preparedness~~] management functions within the state.

3 B. In carrying out the provisions of the [~~State~~
4 ~~Civil~~] All Hazard Emergency [~~Preparedness~~] Management Act, the
5 governor is authorized to:

6 (1) cooperate with the federal government and
7 agree to carry out [~~civil~~] all hazard emergency [~~preparedness~~]
8 management responsibilities delegated in accordance with
9 existing federal laws and policies and cooperate with other
10 states and with private agencies in all matters relating to the
11 [~~civil~~] all hazard emergency [~~preparedness~~] management of the
12 state and nation;

13 (2) issue, amend or rescind the necessary
14 orders, [~~regulations~~] rules and procedures to carry out the
15 provisions of the [~~State-Civil~~] All Hazard Emergency
16 [~~Preparedness~~] Management Act;

17 (3) provide those resources and services
18 necessary to avoid or minimize economic or physical harm until
19 a situation becomes stabilized and again under local self-
20 support and control, including the provision, on a temporary,
21 emergency basis, [~~for~~] of lodging, sheltering, health care,
22 food, [~~any~~] transportation or shipping necessary to protect
23 lives or public property; or for any other action necessary to
24 protect the public health, safety and welfare;

25 (4) prepare a comprehensive emergency

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1 operations plan and program [~~for the civil emergency~~
2 ~~preparedness of the state~~] and to integrate the state emergency
3 operations plan and program with the [~~civil emergency~~
4 ~~preparedness~~] emergency operations plans and programs of the
5 federal government and other states and to coordinate the
6 preparation of emergency operations plans and programs [~~for~~
7 ~~civil emergency preparedness~~] by the political subdivisions of
8 this state;

9 (5) procure supplies and equipment, to
10 institute training programs and public information programs and
11 to take all necessary preparatory actions, including the
12 partial or full mobilization of state and local government
13 forces and resources in advance of actual disaster, to ensure
14 the furnishing of adequately trained and equipped emergency
15 forces of government and auxiliary personnel to cope with
16 disasters resulting from enemy attack or other causes; and

17 (6) enter into mutual aid agreements with
18 other states and to coordinate mutual aid agreements between
19 political subdivisions of the state."

20 Section 12. Section 12-10-5 NMSA 1978 (being Laws 1959,
21 Chapter 190, Section 6, as amended) is amended to read:

22 "12-10-5. LOCAL [CIVIL] EMERGENCY [PREPAREDNESS]
23 MANAGEMENT.--The governing bodies of the political subdivisions
24 of the state are responsible for the [~~civil~~] all hazard
25 emergency [~~preparedness~~] management of their respective

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1 jurisdictions. Each political subdivision is authorized to
2 establish, by ordinance or resolution, a local office of
3 [~~civil~~] emergency [~~preparedness~~] management as an agency of the
4 local government and responsible to the governing body, in
5 accordance with the state [~~civil~~] emergency [~~preparedness~~]
6 operations plan and program. Every local coordinator of
7 [~~civil~~] emergency [~~preparedness~~] management shall be appointed
8 by the governing body, subject to the approval of the [~~state~~
9 ~~director~~] executive director of the office of homeland security
10 and emergency management, and [~~such~~] the local coordinator
11 shall have direct responsibility for carrying out the [~~civil~~]
12 all hazard emergency [~~preparedness~~] management program of the
13 political subdivision. [~~He~~] The executive director shall
14 coordinate the [~~civil~~] emergency [~~preparedness~~] management
15 activities of all local governmental departments and agencies
16 and shall maintain liaison with and cooperate with [~~civil~~
17 ~~preparedness~~] emergency management agencies and organizations
18 of other political subdivisions and of the state government.
19 Each local organization shall perform [~~civil~~] emergency
20 [~~preparedness~~] management functions within the territorial
21 limits of the political subdivision within which it is
22 organized."

23 Section 13. Section 12-10-6 NMSA 1978 (being Laws 1959,
24 Chapter 190, Section 7, as amended) is amended to read:

25 "12-10-6. MUTUAL AID AGREEMENTS.--Each political

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1 subdivision may, in cooperation with other public and private
2 agencies within the state, enter into mutual aid agreements for
3 reciprocal [~~civil~~] emergency [~~preparedness~~] management aid and
4 assistance. [~~Such~~] The agreements shall be consistent with the
5 state [~~civil~~] emergency [~~preparedness~~] operations plan, and in
6 time of emergency it shall be the duty of each local [~~civil~~]
7 emergency [~~preparedness~~] management organization to render
8 assistance within [~~their~~] its capabilities and in accordance
9 with the provisions of the program and plan promulgated by the
10 [~~civil emergency preparedness division~~] office of homeland
11 security and emergency management."

12 Section 14. Section 12-10-7 NMSA 1978 (being Laws 1959,
13 Chapter 190, Section 8, as amended) is amended to read:

14 "12-10-7. AUTHORITY TO MAKE APPROPRIATIONS AND ACCEPT
15 AID.--

16 A. Each political subdivision of the state shall
17 have the power to make appropriations in the manner prescribed
18 by law, and subject to the limitations of the law, for the
19 payment of expenses of [~~civil~~] emergency [~~preparedness~~]
20 management.

21 B. Whenever the federal government or any agency or
22 officer thereof shall offer to the state or any political
23 subdivision thereof services, equipment, supplies, materials or
24 funds by way of gift, grant or loan for purposes of [~~civil~~]
25 emergency [~~preparedness~~] management, the state, acting through

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1 the governor, or the political subdivision, acting with the
2 consent of the governor, may accept the offer and may authorize
3 any officer of the state or of the political subdivision to
4 receive the aid and assistance.

5 C. Whenever any private person, firm or corporation
6 shall offer to the state or to any political subdivision
7 thereof any aid or assistance for [~~civil~~] emergency
8 [~~preparedness~~] management, the state or the political
9 subdivision shall be authorized to accept the aid or
10 assistance, subject to the provisions of this section."

11 Section 15. Section 12-10-8 NMSA 1978 (being Laws 1963,
12 Chapter 193, Section 1, as amended) is amended to read:

13 "12-10-8. CIVIL LIABILITY--LIMITED.--Any person owning or
14 controlling real estate or other premises who voluntarily and
15 without compensation grants a license or privilege or otherwise
16 permits the designation or use of the whole or any part of
17 [~~his~~] the person's real estate or premises for the purpose of
18 sheltering persons during an actual or impending enemy attack
19 or other disaster shall, together with [~~his~~] the person's
20 successors in interest, if any, not be civilly liable for
21 negligently causing the death of or injury to any person on or
22 about the real estate or premises or for the loss of or damage
23 to the property of such person, providing [~~said~~] the premises
24 have been approved either in whole or in part by the proper
25 [~~civil~~] all hazard emergency [~~preparedness~~] management

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1 authorities for such purpose."

2 Section 16. Section 12-10-9 NMSA 1978 (being Laws 1959,
3 Chapter 190, Section 9, as amended) is amended to read:

4 "12-10-9. EXISTING SERVICES AND FACILITIES TO BE
5 ~~[UTILIZED]~~ USED BY AGENCY.--The governor, the ~~[director of the~~
6 ~~technical and emergency support division of the department of~~
7 ~~public safety]~~ office of homeland security and emergency
8 management and the governing bodies of the political
9 subdivisions of the state are directed to ~~[utilize]~~ use, in
10 carrying out the provisions of the ~~[State Civil]~~ All Hazard
11 Emergency ~~[Preparedness]~~ Management Act, the services,
12 equipment, supplies and facilities of existing departments,
13 offices and agencies of the state and ~~[of the]~~ its political
14 subdivisions ~~[thereof]~~ to the maximum extent practicable, and
15 the officers and personnel of all departments, offices and
16 agencies ~~[thereof]~~ of the state and its political subdivisions
17 are directed to cooperate with and extend their services and
18 facilities to the governor or to the ~~[director]~~ office or to
19 the local ~~[coordinators]~~ coordinators of ~~[civil]~~ all hazard
20 emergency ~~[preparedness]~~ management throughout the state upon
21 request."

22 Section 17. Section 12-10-10 NMSA 1978 (being Laws 1959,
23 Chapter 190, Section 10, as amended) is amended to read:

24 "12-10-10. ENFORCEMENT OF EXECUTIVE ORDERS AND
25 ~~[REGULATIONS]~~ RULES.--

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1 A. It is the duty of all political subdivisions of
2 the state and their coordinators of the [~~civil~~] all hazard
3 emergency [~~preparedness~~] management programs appointed pursuant
4 to the provisions of the [~~State-Civil~~] All Hazard Emergency
5 [~~Preparedness~~] Management Act to comply with and enforce all
6 executive orders and [~~regulations~~] rules made by the governor
7 or under [~~his~~] the governor's authority pursuant to law.

8 B. Political subdivisions shall meet all state and
9 federal requirements before becoming eligible to participate in
10 state and federal [~~civil~~] all hazard emergency [~~preparedness~~]
11 management assistance programs. They must comply with all
12 state and federal [~~regulations~~] rules and procedures and shall
13 be removed from participation in [~~said~~] the assistance programs
14 by the executive director of the office of homeland security
15 and emergency management for failure to comply with [~~such~~
16 ~~regulations~~] the rules and procedures or to maintain their
17 eligibility in accordance with prescribed requirements."

18 Section 18. Section 12-10-11 NMSA 1978 (being Laws 2002,
19 Chapter 83, Section 2) is amended to read:

20 "12-10-11. OUT-OF-STATE LICENSE HOLDERS--POWERS--
21 DUTIES.--During an emergency, a person who holds a license,
22 certificate or other permit that is issued by a state or
23 territory of the United States and that evidences the meeting
24 of qualifications for professional, mechanical or other skills
25 may be credentialed, if appropriate and approved by the

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1 department of health or the [~~department of public safety~~]
2 office of homeland security and emergency management, to render
3 aid involving those skills to meet an emergency, subject to
4 [~~such~~] limitations and conditions as the governor may prescribe
5 by executive order or otherwise. [~~Such~~] A person shall be
6 considered a public employee for the purposes of the Tort
7 Claims Act when approved to perform [~~such~~] those duties."

8 Section 19. Section 12-10-12 NMSA 1978 (being Laws 2002,
9 Chapter 83, Section 3) is amended to read:

10 "12-10-12. APPLICATION.--The provisions of Section [~~2 of~~
11 ~~this act~~] 12-10-11 NMSA 1978 apply to a person from any state
12 or territory whether or not a party to the Emergency Management
13 Assistance Compact."

14 Section 20. Section 12-10-13 NMSA 1978 (being Laws 2002,
15 Chapter 83, Section 4) is amended to read:

16 "12-10-13. IN-STATE LICENSE HOLDERS--POWERS--DUTIES.--
17 During an emergency, a person who holds a license, certificate
18 or other permit that is issued by the state [~~of New Mexico~~] and
19 that evidences the meeting of qualifications for professional,
20 mechanical or other skills may be credentialed, if appropriate
21 and approved by the department of health or the [~~department of~~
22 ~~public safety~~] office of homeland security and emergency
23 management, to render aid involving those skills to meet a
24 declared emergency, and shall be considered a public employee
25 for the purposes of the Tort Claims Act when approved to

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1 perform ~~[such]~~ those duties."

2 Section 21. Section 12-10A-1 NMSA 1978 (being Laws 2003,
3 Chapter 218, Section 1) is amended to read:

4 "12-10A-1. SHORT TITLE.--~~[This act]~~ Chapter 12, Article
5 10A NMSA 1978 may be cited as the "Public Health Emergency
6 Response Act".

7 Section 22. Section 12-10A-3 NMSA 1978 (being Laws 2003,
8 Chapter 218, Section 3) is amended to read:

9 "12-10A-3. DEFINITIONS.--As used in the Public Health
10 Emergency Response Act:

11 A. "attorney general" means the New Mexico attorney
12 general ~~[for the state of New Mexico]~~;

13 B. "court" means the district court for the
14 judicial district where a public health emergency is occurring,
15 the district court for Santa Fe county or, in the event that a
16 district court cannot adequately provide services, a district
17 court designated by the New Mexico supreme court;

18 C. "director" means the executive director of the
19 office of homeland security and emergency management or the
20 executive director's designee;

21 D. "health care supplies" means medication, durable
22 medical equipment, instruments, linens or any other material
23 that the state ~~[of New Mexico]~~ may need to use in a public
24 health emergency, including supplies for preparedness,
25 mitigation and recovery;

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1 E. "health facility" means:

2 (1) a facility licensed by the state [~~of New~~
3 ~~Mexico~~] pursuant to the provisions of the Public Health Act;

4 (2) a nonfederal facility or building, whether
5 public or private, for-profit or nonprofit, that is used,
6 operated or designed to provide health services, medical
7 treatment, nursing services, rehabilitative services or
8 preventive care;

9 (3) a federal facility, when the appropriate
10 federal entity provides its consent; or

11 (4) the following properties when they are
12 used for, or in connection with, health-related activities:

13 (a) laboratories;

14 (b) research facilities;

15 (c) pharmacies;

16 (d) laundry facilities;

17 (e) health personnel training and
18 lodging facilities;

19 (f) patient, guest and health personnel
20 food service facilities; and

21 (g) offices or office buildings used by
22 persons engaged in health care professions or services;

23 F. "isolation" means the physical separation for
24 possible medical care of persons who are infected or who are
25 reasonably believed to be infected with a threatening

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1 communicable disease or potential threatening communicable
2 disease from non-isolated persons, to protect against the
3 transmission of the threatening communicable disease to
4 non-isolated persons;

5 G. "public health emergency" means the occurrence
6 or imminent threat of exposure to an extremely dangerous
7 condition or a highly infectious or toxic agent, including a
8 threatening communicable disease, that poses an imminent threat
9 of substantial harm to the population of [~~the state of~~] New
10 Mexico or any portion thereof;

11 H. "public health official" means the secretary of
12 health or [~~his~~] the secretary's designee, including a qualified
13 public individual or group or a qualified private individual or
14 group, as determined by the secretary of health;

15 I. "quarantine" means the precautionary physical
16 separation of persons who have or may have been exposed to a
17 threatening communicable disease or a potentially threatening
18 communicable disease and who do not show signs or symptoms of a
19 threatening communicable disease, from non-quarantined persons,
20 to protect against the transmission of the disease to non-
21 quarantined persons;

22 J. "secretary of health" means the secretary [~~of~~
23 ~~health~~] or [~~his~~] the secretary's designee;

24 K. "secretary of public safety" means the secretary
25 [~~of public safety~~] or [~~his~~] the secretary's designee; and

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1 L. "threatening communicable disease" means a
2 disease that causes death or great bodily harm that passes from
3 one person to another and for which there are no means by which
4 the public can reasonably avoid the risk of contracting the
5 disease. "Threatening communicable disease" does not include
6 acquired immune deficiency syndrome or other infections caused
7 by the human immunodeficiency virus."

8 Section 23. Section 12-10A-17 NMSA 1978 (being Laws 2003,
9 Chapter 218, Section 17) is amended to read:

10 "12-10A-17. RULEMAKING.--The secretary of public safety,
11 the secretary of health, the director and, where appropriate,
12 other affected state agencies in consultation with the
13 [~~secretary of health and the secretary of public safety~~]
14 secretaries and director, shall promulgate and implement rules
15 that are reasonable and necessary to implement and effectuate
16 the Public Health Emergency Response Act."

17 Section 24. Section 12-12-17 NMSA 1978 (being Laws 1983,
18 Chapter 80, Section 1, as amended) is amended to read:

19 "12-12-17. SHORT TITLE.--[~~Chapter 74, Article 4B~~]
20 Sections 12-12-17 through 12-12-30 NMSA 1978 may be cited as
21 the "Hazardous Materials Emergency [~~Management~~] Response Act"."

22 Section 25. Section 12-12-18 NMSA 1978 (being Laws 1983,
23 Chapter 80, Section 2) is amended to read:

24 "12-12-18. FINDINGS AND PURPOSE.--

25 A. The legislature finds that the use of hazardous

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1 materials, including radioactive materials, and the
2 transportation of such materials through or within New Mexico
3 occurs on a daily basis, and, no matter how safety-conscious
4 facilities, users, shippers or carriers are, accidents may
5 occur. In the event of an accident [~~involving hazardous~~
6 ~~materials~~], resource requirements may be beyond the capability
7 of local governments, and the state must be prepared to respond
8 quickly and effectively to protect the health and safety of its
9 citizens and the environment.

10 B. The legislature further finds that at the
11 present time there is no statewide hazardous materials
12 emergency response or emergency management plan and that no
13 state agency is given explicit statutory authority for the
14 management of an emergency involving radioactive materials.

15 C. It is the purpose of the Hazardous Materials
16 Emergency [~~Management~~] Response Act to:

17 (1) provide that adequate hazardous materials
18 emergency management capability exists in the state to protect
19 the health and safety of New Mexico citizens and the
20 environment;

21 (2) delineate those state agencies that are
22 responsible for responding to [~~a hazardous materials~~] an
23 accident and providing for the control and management of such
24 an accident and to provide for the cooperation of other state
25 agencies and local governments in emergency management; and

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1 (3) provide for the formulation of a
2 comprehensive hazardous materials emergency [~~management~~]
3 response plan [~~which~~] that will be distributed statewide and
4 [~~which~~] that will be complied with by all persons who may be
5 involved in responding to [~~a hazardous materials~~] an accident."

6 Section 26. Section 12-12-19 NMSA 1978 (being Laws 1983,
7 Chapter 80, Section 3, as amended by Laws 1997, Chapter 152,
8 Section 1 and also by Laws 1997, Chapter 231, Section 1) is
9 amended to read:

10 "12-12-19. DEFINITIONS.--As used in the Hazardous
11 Materials Emergency [~~Management~~] Response Act:

12 A. "accident" means an event involving hazardous
13 materials that may cause injury to persons or damage to
14 property or release hazardous materials to the environment;

15 B. "administrator" means the hazardous materials
16 emergency response administrator;

17 C. "board" means the hazardous materials safety
18 board;

19 D. "chief" means the chief of the New Mexico state
20 police;

21 E. "commission" means the state emergency response
22 commission;

23 F. "department" means the [~~department of public~~
24 safety] office of homeland security and emergency management;

25 G. "emergency management" means the ability to

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1 prepare for, respond to, mitigate, recover and restore the
2 scene of an institutional, industrial, transportation or other
3 accident;

4 H. "first responder" means the first law
5 enforcement officer or other public service provider with a
6 radio-equipped vehicle to arrive at the scene of an accident;

7 I. "hazardous materials" means hazardous
8 substances, radioactive materials or a combination of hazardous
9 substances and radioactive materials;

10 J. "hazardous substances" means flammable solids,
11 semisolids, liquids or gases; poisons; corrosives; explosives;
12 compressed gases; reactive or toxic chemicals; irritants; or
13 biological agents, but does not include radioactive materials;

14 K. "orphan hazardous materials" means hazardous
15 substances, radioactive materials, a combination of hazardous
16 substances and radioactive materials or substances used in the
17 manufacture of controlled substances in violation of the
18 Controlled Substances Act where an owner of the substances or
19 materials cannot be identified;

20 L. "plan" means the statewide hazardous materials
21 emergency response plan;

22 M. "radioactive materials" means any material or
23 combination of materials that spontaneously emits ionizing
24 radiation. Materials in which the estimated specific activity
25 is not greater than 0.002 microcuries per gram of material are

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1 not considered to be radioactive materials unless determined to
2 be so by the hazardous and radioactive materials bureau of the
3 water and waste management division of the department of
4 environment for purposes of emergency response pursuant to the
5 Hazardous Materials Emergency [Management] Response Act;

6 N. "responsible state agency" means an agency
7 designated in Subsection D of Section ~~[74-4B-5]~~ 12-12-21 NMSA
8 1978 with responsibility for managing a certain type of
9 accident or performing certain functions at the scene of such
10 accident; and

11 O. "secretary" or "director" means the ~~[secretary~~
12 ~~of public safety; and~~

13 P. ~~"task force" means the emergency management task~~
14 ~~force]~~ executive director of homeland security and emergency
15 management."

16 Section 27. Section 12-12-20 NMSA 1978 (being Laws 1983,
17 Chapter 80, Section 4, as amended) is amended to read:

18 "12-12-20. STATE RESPONSIBILITY FOR MANAGEMENT OF
19 ACCIDENTS--IMMUNITY FROM LIABILITY--COOPERATIVE AGREEMENTS--
20 PRIVATE PROPERTY.--

21 A. The ~~[secretary]~~ director shall have final
22 authority to administer the provisions of the Hazardous
23 Materials Emergency [Management] Response Act.

24 B. As between state and local governments, the
25 state government has the primary responsibility for the

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1 management of an accident, and the local government in whose
2 jurisdiction the accident occurs shall assist the state in its
3 management of the accident.

4 C. Nothing in the Hazardous Materials Emergency
5 ~~[Management]~~ Response Act shall be construed as a waiver or
6 alteration of the immunity from liability granted under the
7 Tort Claims Act or as a waiver of any other immunity or
8 privilege under law.

9 D. The state, through the ~~[secretary or his]~~
10 director or director's designee, may enter into cooperative
11 agreements with county and municipal governments for the
12 management of accidents based on the severity of the accident
13 and the resources of the local government. The plan shall set
14 forth the criteria for determining when an accident may be
15 managed by the local government in whose jurisdiction the
16 accident occurred.

17 E. The ~~[secretary]~~ director shall support emergency
18 response capabilities by assisting local and state responders
19 in the acquisition of equipment, training and hazardous
20 materials information.

21 F. The state, through the ~~[secretary or his]~~ the
22 director or the director's designee, may enter into cooperative
23 agreements with the federal government, Indian tribes and
24 pueblos and bordering states for assistance in the management
25 of accidents.

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1 G. Whenever an accident appears imminent or has
2 occurred, employees or authorized persons of responsible state
3 agencies as defined in Section [~~74-4B-5~~] 12-12-21 NMSA 1978 are
4 authorized to enter upon any premises for the purpose of
5 determining whether it is necessary for emergency management
6 procedures to be implemented. The state on-scene coordinator
7 or a responsible state agency may take full control and custody
8 of the premises for the purpose of managing the accident."

9 Section 28. Section 12-12-21 NMSA 1978 (being Laws 1983,
10 Chapter 80, Section 5, as amended) is amended to read:

11 "12-12-21. STATE POLICE EMERGENCY RESPONSE OFFICER--
12 PROCEDURE FOR NOTIFICATION--COOPERATION OF OTHER STATE AGENCIES
13 AND LOCAL GOVERNMENTS.--

14 A. The [~~secretary~~] director, in addition to having
15 final authority to administer the provisions of the Hazardous
16 Materials Emergency [~~Management~~] Response Act, shall be
17 responsible for central coordination and communication in the
18 event of an accident.

19 B. The chief shall designate one or more persons to
20 be known as "state police emergency response officers". A
21 state police emergency response officer shall be trained in
22 accident evaluation and emergency response and shall be
23 available to answer an emergency response call from the first
24 responder.

25 C. In the event of an accident, if the first

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1 responder is a law enforcement officer, [~~he~~] the officer shall
2 immediately notify the state police district emergency response
3 officer in [~~his~~] the officer's area, who shall in turn
4 immediately notify the state police emergency response center.
5 If the first responder is a person with radio capability tied
6 into the radio communications bureau of the information systems
7 division of the general services department, [~~he~~] the person
8 shall immediately notify Santa Fe control, who shall in turn
9 immediately notify the state police emergency response center.
10 The state police emergency response center shall:

11 (1) evaluate and determine the scope of the
12 accident based on information provided by the first responder;

13 (2) instruct the first responder on how to
14 proceed at the accident scene;

15 (3) immediately notify the appropriate
16 responsible state agency and advise it of the necessary
17 response;

18 (4) notify the sheriff or chief of police in
19 whose jurisdiction the accident occurred; and

20 (5) coordinate field communications and summon
21 additional resources requested by the emergency management
22 team.

23 D. The responsible state agencies shall be:

24 (1) the New Mexico state police division of
25 the department of public safety [~~department~~] for coordination,

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1 law enforcement and traffic and crowd control;

2 (2) the [~~environmental improvement division of~~
3 ~~the health and environment~~] department of environment for
4 assistance with accidents involving [~~radioactive or~~] hazardous
5 materials or hazardous substances;

6 (3) the state fire marshal's office for
7 assistance with any accident involving hazardous materials;

8 (4) the emergency medical services bureau of
9 the [~~health services division of the~~] department of health [~~and~~
10 ~~environment department~~] for assistance with accidents involving
11 casualties;

12 (5) the [~~emergency planning and coordination~~
13 ~~bureau of the public safety department~~] office of homeland
14 security and emergency management and the [~~military division of~~
15 ~~the~~] department of military affairs for assistance with
16 accidents [~~which~~] that require the evacuation of the vicinity
17 of the accident or the use of the national guard of New Mexico;
18 and

19 (6) the [~~state highway and~~] department of
20 transportation [~~department~~] for assistance with road closures,
21 designating alternate routes and related services.

22 E. Other state agencies and local governments shall
23 assist the responsible state agencies when requested to do so.

24 F. Any driver of a vehicle carrying hazardous
25 materials involved in an accident [~~which~~] that may cause injury

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1 to persons or property or any owner, shipper or carrier of
2 hazardous materials involved in an accident who has knowledge
3 of such accident or any owner or person in charge of any
4 building, premises or facility where such an accident occurs
5 shall immediately notify the New Mexico state police division
6 of the department of public safety [~~department~~] by the quickest
7 means of communication available."

8 Section 29. Section 12-12-23 NMSA 1978 (being Laws 1984,
9 Chapter 41, Section 6, as amended) is amended to read:

10 "12-12-23. HAZARDOUS MATERIALS EMERGENCY RESPONSE
11 ADMINISTRATOR--CREATED--DUTIES.--[A.] The position of
12 "hazardous materials emergency response administrator" is
13 created within the [~~technical and emergency support division of~~
14 ~~the public safety department~~] office of homeland security and
15 emergency management. The director shall assign the
16 administrator's duties.

17 [~~B. The administrator shall, subject to the~~
18 ~~approval of the director of the technical and emergency support~~
19 ~~division of the public safety department, provide staff support~~
20 ~~to the task force and the board and shall:~~

21 (1) ~~maintain inventories and databases~~
22 ~~relevant to the task force and board activities;~~

23 (2) ~~maintain current rosters of emergency~~
24 ~~response personnel and other contact persons with knowledge,~~
25 ~~resources and capabilities for emergency response functions;~~

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1 ~~(3) update the plan and accompanying documents~~
2 ~~at the direction of the task force;~~

3 ~~(4) schedule activities required by the task~~
4 ~~force and board; and~~

5 ~~(5) perform other duties requested by the task~~
6 ~~force and board in accordance with the provisions of the~~
7 ~~Emergency Management Act and the plan.~~

8 ~~G. Money appropriated to the public safety~~
9 ~~department for administering the Emergency Management Act or~~
10 ~~received through grants or other sources shall be expended upon~~
11 ~~vouchers signed by the director of the technical and emergency~~
12 ~~support division of the public safety department.]"~~

13 Section 30. Section 12-12-27 NMSA 1978 (being Laws 1983,
14 Chapter 80, Section 10) is amended to read:

15 "12-12-27. CLEAN-UP.--Nothing in the Hazardous Materials
16 Emergency [Management] Response Act shall be construed to
17 relieve hazardous materials owners, shippers or carriers of
18 their responsibilities and liability in the event of an
19 accident. Such persons shall assist the state as requested in
20 responding to an accident and are responsible for restoring the
21 scene of the accident to the satisfaction of the state."

22 Section 31. Section 74-4E-1 NMSA 1978 (being Laws 1989,
23 Chapter 149, Section 1) is amended to read:

24 "74-4E-1. SHORT TITLE.--~~[Sections 1 through 9 of this~~
25 ~~act]~~ Chapter 74, Article 4E NMSA 1978 may be cited as the

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1 "Hazardous Chemicals Information Act"."

2 Section 32. Section 74-4E-3 NMSA 1978 (being Laws 1989,
3 Chapter 149, Section 3) is amended to read:

4 "74-4E-3. DEFINITIONS.--As used in the Hazardous
5 Chemicals Information Act:

6 A. "commission" means the state emergency response
7 commission;

8 B. "department" or "office" means the [~~public~~
9 ~~safety department~~] office of homeland security and emergency
10 management;

11 C. "emergency responder" means any law enforcement
12 officer, firefighter, medical services professional or other
13 person trained and equipped to respond to hazardous chemical
14 releases;

15 D. "hazardous chemical" means any hazardous
16 chemical, extremely hazardous substance, toxic chemical or
17 hazardous material as defined by Title [HH] 3;

18 E. "facility owner or operator" means any
19 individual, trust, firm, joint stock company, corporation,
20 partnership, association, state agency, municipality or county
21 having legal control or authority over buildings, equipment,
22 structures and other stationary items [~~which~~] that are located
23 on a single site or on contiguous or adjacent sites. For the
24 purposes of Section [~~5 of the Hazardous Chemicals Information~~
25 ~~Act~~] 74-4E-5 NMSA 1978, the term includes owners or operators

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1 of motor vehicles, rolling stock and aircraft;

2 F. "local emergency planning committee" means any
3 local group appointed by the commission to undertake chemical
4 release contingency planning;

5 G. "release" means any spilling, leaking, pumping,
6 pouring, emitting, emptying, discharging, injecting, escaping,
7 leaching, dumping or disposing into the environment of any
8 hazardous chemical, extremely hazardous substance or toxic
9 chemical. "Release" includes the abandonment or discarding of
10 barrels, containers and other closed receptacles; and

11 H. "Title [~~HH~~] 3" means the federal Emergency
12 Planning and Community Right-to-Know Act of 1986."

13 Section 33. Section 74-4E-4 NMSA 1978 (being Laws 1989,
14 Chapter 149, Section 4) is amended to read:

15 "74-4E-4. COMMISSION CREATED--MEMBERSHIP--TERMS--DUTIES--
16 IMMUNITY GRANTED.--

17 A. The "state emergency response commission" is
18 created. The commission shall consist of seven members who
19 shall be qualified voters of the state of New Mexico. All
20 members shall be appointed by the governor. Among the members
21 appointed, there shall be representatives of private industry,
22 federal facilities, public health and public safety.
23 Appointments shall be made for four-year terms to expire on
24 January 1 of the appropriate year. Commission members shall
25 serve staggered terms as determined by the governor at the time

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1 of their initial appointments. Annually, the governor shall
2 designate, from among the members, a ~~[chairman]~~ chair of the
3 commission.

4 B. The commission shall:

5 (1) exercise supervisory authority to
6 implement Title ~~[HH]~~ 3 within New Mexico;

7 (2) prescribe all reporting forms required by
8 the Hazardous Chemicals Information Act;

9 (3) provide direction to the ~~[emergency~~
10 ~~management task force and the]~~ hazardous materials safety
11 board;

12 (4) report periodically to the radioactive and
13 hazardous materials committee; and

14 (5) report annually to the governor and the
15 legislature.

16 C. The commission may solicit and accept grants
17 from federal or private sources for undertakings that further
18 the purpose of the Hazardous Chemicals Information Act ~~[or the~~
19 ~~Emergency Management Act]~~ and may make contracts necessary to
20 carry out the ~~[purposes of both of those acts]~~ purpose of that
21 act.

22 D. Commission members shall not vote by proxy. A
23 majority of the members constitute a quorum for the conduct of
24 business.

25 E. Commission members shall not be paid, but shall

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1 receive per diem and mileage expenses as provided in the Per
2 Diem and Mileage Act.

3 F. Immunity from tort liability for emergency
4 response actions, including planning or preparation [~~therefore~~]
5 therefor, is granted to the state, its subdivisions and all
6 their agencies, officers, agents and employees. Any waiver of
7 immunity from tort liability granted under the Tort Claims Act
8 shall not be applicable to disaster or emergency response or
9 planning."

10 Section 34. TEMPORARY PROVISION--TRANSFER OF PERSONNEL
11 AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

12 A. On the effective date of this act, all
13 functions, personnel, money, appropriations, records,
14 furniture, equipment and other property of the office of
15 homeland security or the homeland security advisor of the
16 governor's office are transferred to the office of homeland
17 security and emergency management.

18 B. On the effective date of this act, all
19 functions, personnel, money, appropriations, records,
20 furniture, equipment and other property of the office of
21 emergency management and the homeland security and emergency
22 management program of the department of public safety are
23 transferred to the office of homeland security and emergency
24 management.

25 C. On the effective date of this act, contractual

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1 obligations of the office of homeland security or the homeland
2 security advisor of the governor's office or of the technical
3 and emergency support division of the department of public
4 safety or the department of public safety pertaining to the
5 homeland security and emergency management program shall be
6 binding on the office of homeland security and emergency
7 management.

8 D. On the effective date of this act, all
9 references in the law to the office of homeland security or the
10 homeland security advisor of the governor's office shall be
11 deemed to be references to the office of homeland security and
12 emergency management.

13 E. On the effective date of this act, references in
14 law to the State Civil Emergency Preparedness Act shall be
15 deemed to be references to the All Hazard Emergency Management
16 Act. All references in law to the Emergency Management Act
17 shall be deemed to be references to the Hazardous Materials
18 Emergency Response Act.

19 Section 35. APPROPRIATION.--Two hundred fifty thousand
20 dollars (\$250,000) is appropriated from the general fund to the
21 office of homeland security and emergency management for
22 expenditure in fiscal year 2007 to establish the office and
23 carry out its purposes. Any unexpended or unencumbered balance
24 remaining at the end of fiscal year 2007 shall revert to the
25 general fund.

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